



Written by [Steve Byas](#) on March 23, 2016

Oklahoma Supreme Court Nixes Effort to Outlaw Abortion

For the second time, the Oklahoma Supreme Court has ruled against an initiative petition effort that would have either restricted or outlawed the practice of abortion in the Sooner State.

The Oklahoma court said this week that a proposed initiative petition was in contradiction to their understanding of U.S. Supreme Court rulings, such as *Roe v. Wade*, and would therefore not be allowed to go to the voters of Oklahoma in the Fall. The court said it “is not free to impose its own view of the law” — an obvious reference to its deference to the U.S. Supreme Court.



Back in the 1990s, the Oklahoma High Court prevented a milder effort to restrict abortion from reaching the voters. That petition would have generally prevented abortion, but would have allowed exceptions in cases where the life or health of the mother is at stake, and in cases of rape or incest.

The petition effort struck down this week would have outlawed abortion altogether as an act of homicide.

The latest petition was the result of efforts by T. Russell Hunter of Norman, Oklahoma. At first he attempted to get the Oklahoma Legislature to send his proposal to a vote of the people. When that effort failed, he took advantage of the state’s constitutional provision allowing for forcing a statewide vote by initiative petition.

When Oklahoma entered the Union on November 16, 1907 as the 46th state, its constitution was a product of the Progressive Era of American politics. A major tenet of the progressives was that the people should be able to make an end-run, if you will, around the state legislature, and make law directly, through an initiative petition process. Once a petition gathers the requisite number of signatures, and the signatures are validated by the secretary of state’s office as those of registered voters, the governor can then either call a special election to consider the proposal, or allow it to go to the voters at the next general election.

In this case, the American Civil Liberties Union (ACLU) filed a challenge, and the case made its way to the Oklahoma Supreme Court, which ruled the people would not even be allowed to vote on it.

Hunter was understandably disappointed, but not surprised. “It’s exactly what we expected them to do: gag the abolitionists’ petition, deny the people of Oklahoma the right to circulate and vote on a constitutional amendment,” he stated, noting that the court did not cite any particular provision of either the state or federal Constitution in making their ruling: “They ruled it was unconstitutional based on prior rulings and not on an interpretation of the Constitution itself.”

The fundamental court decision, upon which all court rulings since on abortion restrictions have been based, was the 1973 *Roe v. Wade* decision of the U.S. Supreme Court. But Hunter rejected that entire premise, stating, “We believe that in *Roe v. Wade*, the Supreme Court was dead wrong. The



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Constitution does not contain a provision for the right to kill your children.”

Of course, the ACLU thought otherwise. ACLU Executive Director Ryan Kiesel explained his group’s position:

It’s abundantly clear that any measure that interferes with a woman’s reproductive rights, including the legal right to have access to abortion, is unconstitutional. Make no mistake about it, there remain serious threats to reproductive freedom in Oklahoma. There are those who are actively attempting to marginalize women and roll back the hard-earned progress we have made as a society.

Kiesel evidently considers the freedom of taking the life of an unborn child a mark of “progress.”

The legal director of ACLU Oklahoma, Brady Henderson, noted how this petition effort was different from other efforts to restrict the practice of abortion. “This would just outright ban it,” he asserted.

Over the past several years, thanks to the efforts of Tony Lauinger, president of Oklahomans for Life, and other pro-life leaders in Oklahoma, the state legislature has passed many laws restricting the practice of abortion, which has led to a significant reduction in the number of legal abortions in the state.

In fact, this incremental approach has caused much consternation on the part of many pro-abortion groups, who lament that these laws make it so difficult for some women to obtain an abortion that they finally just choose to either keep their baby or place it for adoption.

Back during the time of the second Bush administration, Congressman Ron Paul (R-Texas) attempted to accelerate this process of states restricting abortion, by introducing a bill that would have taken state legislation restricting abortion away from any review by a federal court. Unfortunately, although President George W. Bush was known as a “pro-life” president, he refused to support Congressman Paul’s effort, effectively ending its chances of passage.

Among the multitudes of state laws passed to limit the grisly practice of abortion, in addition to parental notification and consent laws, laws regulating abortion clinics as medical facilities have been a major cause of the demise of many abortion clinics. While the issue of abortion has remained prominent at the national level as a political football, some states have actually reduced the number of abortions, through increasingly sophisticated methods.

In the Hunter petition effort in Oklahoma, however, pro-life forces were attempting to use provisions of the state constitution to bypass the Oklahoma legislature in a bold effort to completely ban the practice. A proposal by State Senator Joseph Silk (SB 1118) would have made an act of abortion “first degree murder”; however, it was stalled, leaving the petition drive as the only way to move the measure forward.

Under the state constitution, the “first power reserved by the people is the initiative.” And while the “legislative authority of the state shall be vested in a Legislature, consisting of a Senate and a House of Representatives,” the Constitution of Oklahoma also makes clear that “the people reserve to themselves the power to propose laws and amendments to the Constitution.”

Seen in this light, the Oklahoma Supreme Court’s decision to not even allow a vote of the people to take place could be regarded as an act of usurpation of the legislative power of the people specifically reserved under the state’s constitution.

The analogy could be made that since the people themselves have an equal role to that of the state



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legislature to pass laws and enact amendments to the state constitution, the action of the Oklahoma Supreme Court would be akin to the court's nine members walking onto the floor of the House of Representatives or the Senate, during the middle of a roll call vote, and demanding that the vote cease.

While certainly any person affected by an Oklahoma law has the right to have their case heard by the courts of the state, including in some cases, the Oklahoma Supreme Court, it is beyond belief that the court would actually attempt to stop a roll call vote of a legislative body.

Yet, not allowing a vote of the people of Oklahoma on an initiative petition, simply because the Supreme Court did not agree with its contents, flies in the face of the constitutional provision that the people of Oklahoma have an equal right with its legislature to make laws.

But the Oklahoma Supreme Court is only modeling itself after the black-robed tyranny of the U.S. Supreme Court.

Steve Byas is a professor of history at Hillsdale Free Will Baptist College in Moore, Oklahoma. His book History's Greatest Libels is a challenge to some of the many lies of history told against some persons as George Washington, Thomas Jefferson, and Clarence Thomas.



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